

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MILLER ET AL,

No. C02-02118 MJJ

Plaintiff,

ORDER TAXING COSTS

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION ET AL,

Defendant.

Before the Court is Defendant International Business Machine Corporation's ("IBM") Application For The Clerk To Tax Costs (Docket No. 668), which is opposed by Plaintiff Ralph I. Miller ("Miller"). Miller has also filed a Motion For Leave To File A Surreponse (Docket No. 675) in connection with its objections to IBM's application.

In the interests of justice, the Court **GRANTS** Plaintiff's Motion For Leave To File a Surreponse and will consider Plaintiff's surreponse as well as IBM's response thereto.

The Court next examines each of the categories of expenses contained in IBM's Bill of Costs.

A. Fees for Filing and Service of Process

Pursuant to the compromise reached by the parties, which addresses the objections raised by Miller, the Court find its appropriate to tax costs of \$605 this category.

B. Reporters' Transcripts

The Court will disallow the costs for the November 27, 2002, August 2, 2005 and December 8, 2005 transcripts as no notice of appeal relating to these transcripts had been filed as of the time these costs were incurred. IBM has withdrawn its request to tax the costs of the April 8, 2003 and

1 April 28, 2006 reporters' transcripts. Accordingly, the Court finds it is appropriate to tax costs only
2 for the November 27, 2002 hearing transcript, which was related to the appeal that Miller
3 subsequently took from this Court's Order granting defendants' motion to dismiss. The Court
4 therefore will tax costs of \$165.00 in this category.

5 **C. Depositions**

6 The Court agrees with IBM that the most reasonable interpretation of Local Rule 54-3(c)(1)
7 permits recovery of the cost of obtaining not only an original transcript and copy transcript of any
8 deposition, but a copy of the video of the deposition if the deposition was visually recorded. IBM
9 has adequately documented the costs in this regard that it seeks to tax.

10 However, the documentation submitted by IBM does not adequately establish that the "wait
11 time" charged by the reporter for the depositions of Victor Paddock and Ralph Miller was due to the
12 tardiness of the witness or the witness' counsel. Accordingly, the Court will disallow these "wait
13 time" charges.

14 Accordingly, the Court finds that it is appropriate to tax costs of \$19,945.97 in this category.

15 **D. Reproduction and Exemplification**

16 The Court finds the documentation submitted by IBM in connection with reproduction and
17 exemplification costs to be "appropriate documentation" within the meaning of Local Rule 54-1.
18 Accordingly, the Court finds that it is appropriate to tax costs of \$8,446.73 in this category.

19 **E. Witness Expenses**


20 IBM has withdrawn its claimed cost relating to the witness fee for Dr. Udinsky's expert
21 deposition. Miller does not contest the other witness expenses. Accordingly, the Court finds that it
22 is appropriate to tax costs of \$ 235.40 in this category.

23 **F. Total Taxable Costs**

24 For the foregoing reasons, the Court **ORDERS** that Miller be taxed \$29398.10 pursuant to
25 Federal Rule of Civil Procedure 54 and Local Civil Rule 54 for the costs incurred by IBM in the
26 litigation of this matter.

27 **IT IS SO ORDERED.**

28 Dated: 4/18/2007



MARTIN J. JENKINS
UNITED STATES DISTRICT JUDGE

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28